

United States Courts  
Southern District of Texas  
FILED

APR 05 2016 SCG

David J. Bradley, Clerk  
Laredo Division

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

UNITED STATES OF AMERICA

V.

CYNTHIA GARCIA  
Defendant

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§

CRIM. NO. 5:15CR633S

**PLEA AGREEMENT**

The United States of America, by and through Kenneth Magidson, United States Attorney for the Southern District of Texas, and Rodolfo Ramirez, Special Assistant United States Attorney, and the defendant, Cynthia Garcia ("Defendant"), and Defendant's counsel, pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

**Defendant's Agreement**

1. Defendant agrees to plead guilty to Count One of the superseding indictment. Count One charges Defendant with conspiracy to commit health care fraud, in violation of Title 18, United States Code, Section 1349. Defendant, by entering this plea, agrees that she is waiving any right to have the facts that the law makes essential to the punishment either charged in the superseding indictment, or proved to a jury or proven beyond a reasonable doubt.

**Punishment Range**

2. The statutory maximum penalty for each violation of Title 18, United States Code, Section 1349, is imprisonment of not more than 10 years and a fine of not more than \$250,000. Additionally, Defendant may receive a term of supervised release after imprisonment not more than three years. See Title 18, United States Code, Sections 3559(a)(3) and 3583(b)(2).

Defendant acknowledges and understands that if she should violate the conditions of any period of supervised release which may be imposed as part of her sentence, then Defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation. *See* Title 18, United States Code, Sections 3559(a)(3) and 3583(e)(3). Defendant understands that she cannot have the imposition or execution of the sentence suspended, nor is she eligible for parole.

#### **Mandatory Special Assessment**

3. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

#### **Immigration Consequences**

4. Defendant recognizes that pleading guilty may have consequences with respect to her immigration status if she is not a citizen of the United States. Defendant understands that if she is not a citizen of the United States, by pleading guilty she may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

#### **Cooperation**

5. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentencing Guidelines. Defendant understands and agrees that

whether such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas. Should Defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the United States Sentencing Guidelines. Defendant further agrees to persist in that plea through sentencing, fully cooperate with the United States, and not oppose the forfeiture of assets contemplated in paragraphs 22 through 24 of this agreement. Defendant understands and agrees that the United States will request that sentencing be deferred until that cooperation is complete.

6. Defendant understands and agrees that "fully cooperate," as that term is used herein, includes providing all information relating to any criminal activity known to Defendant, including but not limited to health care fraud. Defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- (a) Defendant agrees that this plea agreement binds only the United States Attorney for the Southern District of Texas and Defendant; it does not bind any other United States Attorney or any other unit of the Department of Justice;
- (b) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive her Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- (c) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- (d) Defendant agrees to provide truthful, complete and accurate information and testimony and understands any false statements made by the defendant to the Grand Jury or at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the appropriate perjury, false statement, or obstruction statutes;

(e) Defendant agrees to provide to the United States all documents in her possession or under her control relating to all areas of inquiry and investigation; and

(f) Should the recommended departure, if any, not meet Defendant's expectations, the Defendant understands that she remains bound by the terms of this agreement and cannot, for that reason alone, withdraw her plea.

#### **Waiver of Appeal and Collateral Review**

7. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, Section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, Section 2255. In the event Defendant files a notice of appeal following the imposition of the sentence or later collaterally attacks her conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

8. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that she may have received from her counsel, the United States, or the Probation Office, is a prediction and not a promise, did not induce her guilty plea, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive.

Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *See United States v. Booker*, 543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

9. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

#### **The United States' Agreements**

10. The United States agrees to each of the following:

- (a) If Defendant pleads guilty to Count One of the superseding indictment and persists in that plea through sentencing, and if the Court accepts this plea agreement, the United States will move to dismiss any remaining counts of the superseding indictment at the time of sentencing;
- (b) At the time of sentencing, the United States agrees not to oppose Defendant's anticipated request to the Court and the United States Probation Office that she receive a two (2) level downward adjustment pursuant to Section 3E1.1(a) of the United States Sentencing Guidelines, should Defendant accept responsibility as contemplated by the Sentencing Guidelines; and
- (c) If Defendant qualifies for an adjustment under Section 3E1.1(a) of the United States Sentencing Guidelines, the United States agrees not to oppose Defendant's request for an additional one-level departure based on the timeliness of the plea or the expeditious manner in which Defendant provided complete information regarding her role in the offense (if Defendant's offense level is 16 or greater).

#### **Agreement Binding - Southern District of Texas Only**

11. The United States agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the superseding

indictment. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas and Defendant. It does not bind any other United States Attorney. The United States will bring this plea agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

#### **United States' Non-Waiver of Appeal**

12. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with Section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, Section 3553(a); and
- (e) to appeal the sentence imposed or the manner in which it was determined.

#### **Sentence Determination**

13. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, Section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the

parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

#### **Rights at Trial**

14. Defendant understands that by entering into this agreement, she surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

- (a) If Defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and her attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on her own behalf. If the witnesses for Defendant would not appear voluntarily, she could require their attendance through the subpoena power of the court; and
- (c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, she could testify on her own behalf.

#### **Factual Basis for Guilty Plea**

15. Defendant is pleading guilty because she is in fact guilty of the charges contained in Count One of the superseding indictment. If this case were to proceed to trial, the United States

could prove each element of the offense beyond a reasonable doubt. The following facts, among others would be offered to establish Defendant's guilt:

Defendant knowingly agreed with Alaniz to defraud Medicaid by signing false timesheets for Saint Benedicts Home Health Agency, Inc. ("Saint Benedicts") that she knew would be provided to Medicaid to support billing for services that she did not provide. Defendant applied to be a Personal Assistance Services ("PAS") provider for Saint Benedicts after being recruited by Linda Alaniz ("Alaniz"). Defendant was supposed to be working for the Saint Benedicts branch office located in Laredo, Texas. Defendant believed Alaniz to be an owner or executive of the company. Defendant never performed any work for Saint Benedicts.

In early 2014, Defendant was contacted by Alaniz to sign blank timesheets for work she had not performed for Saint Benedicts. Defendant met Alaniz and a Saint Benedicts' employee in a parking lot at night where she was provided with seven to eight blank timesheets to sign. Defendant signed all the timesheets even though she had not done any work for Saint Benedicts. The timesheets were for PAS providers to sign certifying that the person signing worked the hours recorded and completed the tasks assigned. Defendant knew that these timesheets would be provided to Medicaid.

Defendant also filled out an employment application for Saint Benedicts when it was discovered that her first application to Saint Benedicts had been stolen at the beginning of June 2014. Defendant filled out the replacement documents even though she had not previously done any work for Saint Benedicts and had no intention of working for Saint Benedicts in the future.

Once the investigation was underway, Defendant visited the home of her assigned beneficiary, whom she had never met before, for the sole purpose of familiarizing herself with the



beneficiary's home in case she were to be interviewed by federal agents. Defendant picked up a false paycheck issued to her from Saint Benedicts and paid cash to the beneficiary. Defendant performed these acts at the direction of Alaniz.

As a result of Defendant's actions, Saint Benedicts billed Medicaid for \$25,210.47 in PAS services which were never performed by Defendant.

#### **Breach of Plea Agreement**

16. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals, or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

#### **Restitution, Forfeiture, and Fines – Generally**

17. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that she will make a full and complete disclosure of all assets over which she exercises direct or indirect control, or in which she has any financial interest. Unless she receives the prior written permission of the United States, Defendant agrees that neither she nor anyone acting on her behalf shall sell, transfer, alienate, encumber, pledge, withdraw, remove, conceal, dissipate, damage, dispose of, or take any action that would diminish the availability, marketability or value of real or personal assets in which Defendant has an interest

(including but not limited to cash, bank and investment accounts, real estate, motor vehicles, watercraft, jewelry and coins, artwork, antiques, household furniture and furnishings, etc.), except that Defendant may use wages and bank accounts for reasonable living expenses to support herself and any dependents.

18. Defendant agrees to make a complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) 10 days before signing this plea agreement. Every ninety (90) days thereafter, the Defendant shall update the financial statement under oath and submit it to the lead prosecutor on this case. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

19. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis for the forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of her assets to deliver all funds and records of such assets to the United States. The United States does not waive any rights or remedies, including forfeiture of property, as a means to reimburse the crime victim(s). Nothing in this Agreement precludes the United States from pursuing statutorily permitted enforcement action and any and all remedies to collect restitution once a restitution order is imposed.

20. Defendant understands that forfeiture, restitution, and fines are separate components of sentencing and are separate obligations.

### **Restitution**

21. Defendant understands that a mandatory restitution order will be imposed against her in this case and agrees to pay full restitution to the victim regardless of the count of conviction. Defendant stipulates and agrees that as a result of her criminal conduct, the victim incurred a monetary loss of at least \$13,132.59.

a. Defendant understands and agrees that at sentencing, the Court will determine the amount of restitution to fully compensate the victim(s). Defendant understands that the restitution amount imposed by the Court will be due and payable immediately and agrees that Defendant will not attempt to avoid or delay payment.

b. Defendant agrees to the issuance of a Presentence Restitution Order at this time, requiring Defendant to make monthly payments of \$200.00 toward the restitution obligation that will eventually be imposed against the Defendant. On the first business day of each month following the date of this Plea Agreement, Defendant will make monthly payments into the registry of the Court (via cashier's check or money order to "Clerk, U.S. District Court" at P.O. Box 61010, Houston, Texas 77208) until Defendant is no longer on conditions of release. Defendant agrees that the monthly payment amount is based upon Defendant's current ability to pay and is subject to change in the future, whether increase or decrease. If the

Defendant contends that her financial circumstances have materially changed, the Defendant must submit sworn information about that change directly to the lead prosecutor for this case. If the parties come to an agreement, then a new monthly payment amount could be submitted to the Court for approval.

c. Defendant agrees that if she receives a tax refund, she will, within five (5) days of receipt, pay funds into the registry of the Court towards the anticipated restitution debt. If Defendant is single, the entire tax refund amount will be paid; and if Defendant is married, then half of the refund will be paid into the registry. Defendant understands that nothing in this Agreement prevents the United States from pursuing administrative offsets, including by the Internal Revenue Service, once a restitution order has been imposed.

Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

#### **Forfeiture**

22. Defendant stipulates and agrees that the property listed in the superseding indictment's Notice of Forfeiture (and in any supplemental Notices) is subject to forfeiture, and Defendant agrees to the forfeiture of that property.

23. Defendant stipulates and agrees that the factual basis for her guilty plea supports the forfeiture of at least \$13,132.59 against her and in favor of the United States, and Defendant agrees to the imposition of a personal money judgment for that amount against her and in favor of the United States of America. Defendant stipulates and admits that one or more of the conditions set

forth in Title 21, United States Code, Section 853(p), exists. Defendant agrees to forfeit any of her property, or her interest in property, up to the value of any unpaid portion of the money judgment, until the money judgment is fully satisfied.

24. Defendant agrees to waive any and all interest in any asset which is the subject of a related administrative or judicial forfeiture proceeding, whether criminal or civil, federal or state.

25. Defendant consents to the order of forfeiture becoming final as to Defendant immediately following this guilty plea, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A).

26. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge the forfeiture of property in any manner, including by direct appeal or in a collateral proceeding.

#### **Fines**

27. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

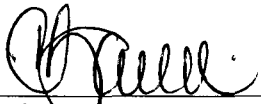
#### **Complete Agreement**

28. This written plea agreement, consisting of 15 pages, including the attached addendum of Defendant and her attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by the

United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against her and that she is pleading guilty freely and voluntarily because she is guilty.

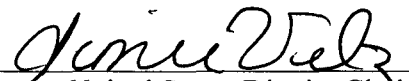
29. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Laredo, Texas, on April 5, 2016

  
Defendant

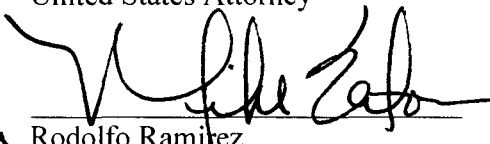
Subscribed and sworn to before me on April 5, 2016


DAVID J. BRADLEY, Clerk  
UNITED STATES DISTRICT CLERK

By:   
Deputy United States District Clerk

APPROVED:

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United States Attorney

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